

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas

As Engrossed: H3/29/99 H4/2/99

82nd General Assembly

A Bill

Regular Session, 1999

SENATE BILL 845

By: Senator Everett

For An Act To Be Entitled

"AN ACT TO AMEND AND REPEAL VARIOUS PROVISIONS IN THE
ARKANSAS CODE REGARDING PUBLIC DEFENDERS; AND FOR
OTHER PURPOSES. "

Subtitle

"AN ACT TO AMEND AND REPEAL VARIOUS
PROVISIONS IN THE ARKANSAS CODE
REGARDING PUBLIC DEFENDERS. "

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 16-87-102, 16-87-103, 16-87-104, 16-87-105,
16-87-106, 16-87-107, 16-87-108, 16-87-109, 16-87-110, 16-87-111, 16-87-112,
and 16-87-113 are repealed.

~~16-87-102. Purpose.~~

~~It is declared to be the policy of this state to provide for the
realization of the constitutional guarantees of counsel for needy persons
accused of serious crimes by means of a program established by this chapter to
the end that no innocent person shall be convicted, that the guilty shall be
convicted, and, when convicted and if imprisonment is warranted, shall be
incarcerated only after a fair trial and in compliance with the Arkansas
Constitution and the United States Constitution.~~

~~16-87-103. Definitions.~~

~~As used in this chapter, unless the context otherwise requires:~~

~~(1) 'Counsel' means any attorney used to serve as counsel pursuant to
the provisions of this chapter;~~

~~(2) 'Detain' means to have in custody or otherwise deprive of freedom of action;~~

~~(3) 'Expenses' include the cost of investigation, other preparation, and trial;~~

~~(4) 'Needy person' means a person who, at the time his need is determined, is unable to employ an attorney or afford other necessary expenses incidental thereto;~~

~~(5) 'Serious crime' includes any felony, misdemeanor, or offense, the penalty for which includes the possibility of confinement or the prolongation of confinement.~~

~~16-87-104. Creation of public defender commissions and offices.~~

~~When a majority of the legislators of any judicial district shall petition the Governor to create a public defender office in their judicial district, the Governor shall create a public defender commission in that judicial district. The commission shall be composed of the county judge or judges of the judicial district and the circuit judge or judges of the judicial district.~~

~~16-87-105. Public defenders and deputy defenders - Appointment - Qualifications.~~

~~(a) The commission shall appoint a public defender for a term of two (2) years who may be removed by the commission for just cause.~~

~~(1) Just cause for removal shall consist of permanent physical or mental disability seriously interfering with the performance of duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice.~~

~~(2) The public defender may serve as many successive terms as the commission may approve.~~

~~(b) Each public defender may appoint deputy defenders as authorized by the public defender's commission to assist him in the performance of his duties.~~

~~(1) The person or persons appointed shall serve at the pleasure of the public defender.~~

~~(2) Whether the deputy public defenders shall be allowed to~~

~~engage in the private practice of law shall be determined on the same basis as that of the public defender.~~

~~(c)(1) The public defender and his deputies must be competent attorneys licensed to practice law in the State of Arkansas.~~

~~(2) The public defender and any deputy public defenders may not be related within the third degree of consanguinity or affinity to the prosecuting attorney, deputy prosecuting attorney, sheriff, chief of police of any town in the county served, judge or magistrate having criminal jurisdiction, or member of the commission, nor may either be a partner or associate or otherwise have any business relationships with the prosecuting attorney, deputy prosecuting attorney, or judge or magistrate having criminal jurisdiction.~~

~~16-87-106. Public defenders - Duties - Court-appointed attorneys.~~

~~(a)(1) If the judge of any court determines that a person subject to the jurisdiction of the court is entitled to representation and a public defender has been created under the provisions of this chapter to represent persons before the court, the court shall appoint the public defender to represent the person, except in those cases where the public defender has a conflict of interest, or is unable to provide indigent defense to a particular court at that time. The commission shall provide an alternative appointment procedure and compensation schedule for court-appointed attorneys where the public defender is not available.~~

~~(2) The public defender shall maintain records regarding the conduct of his office and the performance of his duties pursuant to procedures to be established by the Administrative Office of the Courts of the State of Arkansas. The records shall be available to the commission and the public, except for records concerning matters that are privileged under existing law.~~

~~(b) The commission shall determine if the public defender or his staff may be allowed to engage in the private practice of law outside of their duties as created and defined by the terms of this chapter.~~

~~16-87-107. Office of public defender - Salaries and expenses - Multicounty judicial districts - Employment status.~~

~~(a) The maximum salaries and expenses of the public defender's office in each judicial district shall be established by the commission.~~

~~(b) The salaries and expenses of the office of public defender in each district shall be paid by the counties in the district in such amounts as may be approved by the respective quorum courts of the counties.~~

~~(c) In any multicounty judicial district, the public defender commission may designate one (1) county in the district as the 'host' county for the public defender office. The county treasurer of any such designated host county shall act as the fiscal officer for the indigent defense fund and shall receive from the treasurers of all counties in the judicial district funds collected from any case fee assessed under § 14-20-102 and any other funds appropriated by counties from the county general funds or other sources for the operation of the public defender office. The quorum court of any such host county shall by ordinance appropriate funds for the annual budget of the district public defender office.~~

~~(d) Attorneys appointed or employed as public defenders may be:~~

- ~~(1) Employees of the host county, or~~
- ~~(2) Independent contractors, at the discretion of the public defender commission and with the concurrence of the quorum court of the host county.~~

~~16-87-108. Application by needy person for services.~~

~~(a)(1) Any person desiring to obtain the services of the public defender shall affirm in writing that he is without funds or assets with which to employ private counsel. The affirmation shall further provide in bold print that a false statement as to financial status shall be punishable by a sentence in the state penitentiary of not less than one (1) year nor more than five (5) years and a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).~~

~~(2) The affirmation certificate shall be provided by the public defender to the needy person. Upon execution of the affirmation certificate, the affirmation shall be a permanent part of the needy person's records.~~

~~(b)(1) The determination of whether a person is a needy person and is charged with a serious crime shall be deferred until his first appearance in court or in a suit for payment or reimbursement under § 16-87-109, whichever occurs earlier.~~

~~(2) Thereafter, the court concerned may review and redetermine, with respect to each proceeding, whether he is a needy person.~~

~~16-87-109. Recovery for nonpayment or reimbursement for services.~~

~~(a)(1) In addition to prosecution as provided in this chapter, the public defender on behalf of the county or state may recover payment or reimbursement, as the case may be, from each person who has received legal assistance or any benefit under this chapter to which he was not entitled and for which he refused to pay or reimburse. Suit must be brought within three (3) years after the case on which the aid was received.~~

~~(2) The public defender on behalf of the county or state may recover payment or reimbursement, as the case may be, from each person, other than a person covered by subsection (a) of this section who has received legal assistance under this chapter and who, on the date on which suit is brought, is financially able to pay or reimburse the county for it according to standards of ability to pay applicable under the terms of this chapter, but refuses to do so. Suit must be brought within three (3) years after the date on which the benefit was received.~~

~~(b) Amounts recovered under this section shall be paid into the general fund of the county wherein the charge was placed and the service rendered, or of the state, as the case may be.~~

~~16-87-110. Receipt of certain compensation and reference to another attorney prohibited.~~

~~(a)(1) It shall be unlawful for the public defender to receive any funds, services, or other compensation, directly or indirectly, from any needy person represented.~~

~~(2) A public defender shall not refer any person, needy or otherwise, who contacts the public defender to any other attorney, for any purpose.~~

~~(b) Violation of this section and § 16-87-109 shall be grounds for immediate removal of the public defender found to be in violation.~~

~~(c) Nothing in this chapter shall prohibit the prosecution of an offending public defender or other disciplinary action.~~

~~16-87-111. Investigators authorized.~~

~~(a) In any county having a public defender, the public defender may employ an investigator to help him in carrying out his duties.~~

1 ~~(b) The investigator may be employed as an independent contractor or~~
2 ~~may be employed as an employee of the county at the discretion of the quorum~~
3 ~~court.~~

4
5 ~~16-87-112. Public defender programs in judicial districts and counties.~~

6 ~~(a) There is a need to create effective state-wide public defender~~
7 ~~programs at the judicial district or county level.~~

8 ~~(b) Those districts or counties operating a public defender office~~
9 ~~under a separate act or provision of the code may establish a public defender~~
10 ~~commission for their county or district and may exercise all authority granted~~
11 ~~herein not in conflict with their particular act or code provisions in §§ 16-~~
12 ~~87-101 - 16-87-112.~~

13 ~~(c) The Administrative Office of the Courts shall standardize a~~
14 ~~reporting procedure to collect information from the judicial districts or~~
15 ~~counties to aid in evaluation and administrative assistance to the public~~
16 ~~defender programs created under this or other provisions of the Code.~~

17
18 ~~16-87-113. Affirmation of eligibility to be represented by public~~
19 ~~defender.~~

20 ~~(a)(1) Any person charged with a criminal offense desiring to obtain~~
21 ~~the services of a public defender shall affirm in writing that he is without~~
22 ~~funds or assets with which to employ private counsel and that he has not been~~
23 ~~released on money bail in an amount greater than fifteen thousand dollars~~
24 ~~(\$15,000) pursuant to the execution of an unsecured or secured bond.~~

25 ~~(2)(A) The affirmation certificate shall be provided by the court~~
26 ~~or the public defender to the indigent person; and~~

27 ~~(B) Upon execution, the affirmation certificate shall~~
28 ~~become a permanent part of the indigent person's court record.~~

29 ~~(b)(1) If a public defender is appointed and the indigent person is~~
30 ~~later released on money bail in an amount greater than fifteen thousand~~
31 ~~dollars (\$15,000) pursuant to the execution of an unsecured or secured bond,~~
32 ~~then the court may hold a hearing to determine if the person is still eligible~~
33 ~~and entitled to the services of a public defender.~~

34 ~~(2) If the court determines that the person is ineligible and not~~
35 ~~entitled to the services of a public defender, then the court may release the~~
36 ~~public defender as attorney of record.~~

SECTION 2. Arkansas Code 16-87-206, 207, and 208 are repealed.

~~16-87-206. Trial public defender offices.~~

~~(a) The circuit judges within one (1) or more judicial districts may, with the approval of the quorum courts of the respective counties to be served, create an office of trial public defender within any county or combination of counties within their judicial districts.~~

~~(b) Trial public defenders shall defend indigent persons as determined by the circuit, municipal, juvenile, probate, or chancery courts in the counties they serve in all felony, misdemeanor, juvenile, guardianship, and mental health cases, in traffic cases punishable by incarceration, and all contempt proceedings punishable by incarceration.~~

~~(c) Trial public defenders appointed under this subchapter shall be appointed from a list of qualified nominees submitted by the circuit, chancery, probate, and juvenile court judges of the county or counties to be served by them.~~

~~(d) Each judge may nominate up to three (3) attorneys to serve as a trial public defender.~~

~~(e)(1) Each circuit judge, chancery judge, probate judge, juvenile court judge, and county judge of the county or counties to be served by the trial public defender may then vote on whom to appoint as a trial public defender from the list of nominees, and the person receiving the most votes shall become the trial public defender.~~

~~(2) In the event of a tie vote, the commission shall select the trial public defender.~~

~~(f) Each county in the state shall implement a public defender system designed to provide legal representation to indigent persons charged with offenses punishable by imprisonment. The commission shall annually evaluate the public defender system of each county and determine whether the system is in compliance with the policies and standards established by the commission pursuant to this subchapter.~~

~~(g)(1) The Capital, Conflicts, and Appellate Office shall not be appointed to represent an indigent person in the courts of a county unless the commission has determined that the county is in compliance with the policies and standards established by the commission pursuant to this subchapter.~~

~~(2) If, during a period that a county is not in compliance with~~

1 ~~the policies and standards established by the commission pursuant to this~~
2 ~~subchapter, the Capital, Conflicts, and Appellate Office represents an~~
3 ~~indigent person charged with a crime committed in the county, all legal fees,~~
4 ~~expenses, and costs incurred by the Capital, Conflicts, and Appellate Office~~
5 ~~during the period of noncompliance, including reasonable compensation for the~~
6 ~~time spent by personnel of the Capital, Conflicts, and Appellate Office, shall~~
7 ~~be paid by the county.~~

8 ~~(3) The commission shall certify the legal fees, expenses, and~~
9 ~~costs incurred by the Capital, Conflicts, and Appellate Office during such~~
10 ~~period of noncompliance to the Chief Fiscal Officer of the State, who is~~
11 ~~authorized to transfer such legal fees, expenses, and costs to the commission~~
12 ~~from the County Aid Fund general revenue turnback funds and to charge such~~
13 ~~legal fees, expenses, and costs transferred to the commission against the~~
14 ~~general revenue turnback to the county in which the crime was committed.~~

15 ~~(h) Except as provided in this subchapter or by other specific~~
16 ~~statutory authority, all legal fees or other expenses or costs incurred after~~
17 ~~July 1, 1993, in the representation of indigent persons charged with crimes~~
18 ~~punishable by imprisonment shall be paid by the county in which the crime was~~
19 ~~committed.~~

20
21 ~~16-87-207. Term of office.~~

22 ~~A trial public defender shall be appointed for a term of two (2) years,~~
23 ~~and may be removed before the expiration of the term only for just cause,~~
24 ~~which includes permanent physical or mental disability seriously interfering~~
25 ~~with the performance of duties, willful misconduct in office, willful and~~
26 ~~persistent failure to perform public defender duties, habitual intemperance,~~
27 ~~conduct prejudicial to the administration of justice, and violation of § 16-~~
28 ~~87-214.~~

29
30 ~~16-87-208. Personnel.~~

31 ~~(a) A trial public defender may employ assistants, investigators, and~~
32 ~~other staff within the budget prescribed by the quorum courts of the counties~~
33 ~~he serves.~~

34 ~~(b) The counties served by the trial public defender shall bear the~~
35 ~~costs of facilities, equipment, supplies, and other expenses of the trial~~
36 ~~public defender's office and the compensation of the trial public defender and~~

1 ~~his staff.~~

2 ~~(c)(1) A trial public defender and deputy public defenders may be~~
3 ~~employed on a full-time or a part-time basis.~~

4 ~~(2) A trial public defender and deputies employed on a part-time~~
5 ~~basis may engage in the private practice of law.~~

6 ~~(3) No person may serve as a part-time trial public defender or~~
7 ~~deputy public defender who also serves as a part-time municipal court judge,~~
8 ~~police court judge, or prosecuting attorney.~~

9
10 SECTION 3. Arkansas Code 16-87-209 is amended to read as follows:

11 "16-87-209. Court-appointed attorneys.

12 (a)(1) If the court determines that a conflict of interest exists
13 between an indigent person and the office of the trial public defender, the
14 case shall be reassigned by the court to another trial public defender in an
15 adjacent area.

16 (2) As a last resort, a private attorney who is included in a
17 list of volunteers who have agreed to accept such appointments may be
18 appointed.

19 (b) All licensed attorneys residing in Arkansas shall be notified in
20 writing by the commission that a list is being prepared of attorneys willing
21 to represent indigent persons.

22 (c) Attorneys notified under this section shall have a reasonable time
23 to submit the information requested by the commission.

24 (d)(1) A list for each judicial district shall be prepared, certified,
25 and updated annually by the commission.

26 (2) A separate list of attorneys throughout the state qualified
27 and willing to accept lead counsel appointment in capital cases shall be
28 prepared, certified, and updated annually by the commission.

29 ~~(3)(A) Attorneys may not be excluded from any list unless the~~
30 ~~Capital, Conflicts, and Appellate Office states in writing the reasons for~~
31 ~~such action. Any attorney thus excluded may appeal the decision to the~~
32 ~~Arkansas Supreme Court.~~

33 ~~(B) The commission may not exclude attorneys from the list~~
34 ~~solely as a result of inexperience.~~

35 ~~(4)(3) The Capital, Conflicts, and Appellate Office Commission~~
36 shall may create a second list of attorneys who may be appointed to assist the

1 lead counsel, and the appointing courts ~~may~~ shall appoint attorneys to assist
2 the lead counsel in capital cases.

3 (e) The appointing court shall attempt to equalize the appointments for
4 all attorneys on the list, but this subchapter does not deprive a court of the
5 power to appoint particularly qualified and willing attorneys in capital or
6 other complex litigation.

7 ~~(f) Appointed private attorneys shall be paid reasonable fees and
8 compensation for expenses by the county where the crime was committed.~~

9 ~~(g) The Arkansas Supreme Court may establish presumptive maximum fees
10 that may be exceeded upon a determination by the trial court or the Arkansas
11 Supreme Court that the case required an extraordinary amount of time to
12 prepare or litigate and that the request for extraordinary fees is reasonable
13 under the circumstances.~~

14 ~~(h)~~(f) In no event shall an attorney who has not voluntarily agreed to
15 accept appointments be appointed to represent an indigent person."

16
17 SECTION 4. Arkansas Code 16-87-211 is amended to read as follows:

18 "16-87-211. Compensation.

19 (a) At the conclusion of each case, the appointed attorney shall submit
20 his bill to the appointing court which shall issue an order for appropriate
21 compensation.

22 (b) An application for compensation shall be accompanied by the
23 affidavit of the appointed attorney, detailing the hours spent on the case and
24 the services rendered and whether compensation was received or has been
25 applied for from any other source.

26 (c) There shall be no maximum amount of compensation in capital cases.

27 (d) Any attorney dissatisfied with the decision of the appointing court
28 may appeal to the Arkansas Supreme Court.

29 (e) ~~The county or counties~~ state may also have the right of appeal."

30
31 SECTION 5. Arkansas Code 16-87-213 is amended to read as follows:

32 "16-87-213. Certificate of indigency.

33 (a)(1)(A) Any person charged with an offense punishable by imprisonment
34 who desires to be represented by an appointed attorney shall file with the
35 court in which the person is charged a written certificate of indigency. The
36 court shall not appoint counsel prior to review of the submitted affidavit.

1 (B) The certificate of indigency shall be in a form
2 approved by the commission and shall be provided by the court in which the
3 person is charged.

4 (C) The certificate of indigency shall be executed under
5 oath by the person and shall state in bold print that a false statement is
6 punishable as a Class D felony.

7 (D) Upon execution, the certificate of indigency shall be
8 made a permanent part of the indigent person's records.

9 (2) If the court in which the person is charged determines that
10 the person qualifies for the appointment of an attorney under standards set by
11 the commission, the court shall, except as otherwise provided by this
12 subchapter, appoint the trial public defender to represent the person before
13 the court. At the time of appointment of counsel, the court shall assess a fee
14 of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100)
15 to be paid to the Public Defender Commission in order to defray the costs of
16 the public defender system. The fee may be waived if the court finds such an
17 assessment to be too burdensome. The fee shall be collected by the individual
18 or entity designated by the Quorum Court pursuant to Arkansas Code § 16-13-709
19 to collect fines, costs and restitution, or in the case of municipal court,
20 the municipal court clerk. All such user fees shall be forwarded to the
21 county treasurer, to the credit of the Public Defender User Fee Fund, who
22 shall then remit such fees monthly to the Public Defender Commission on forms
23 provided by the Public Defender Commission. The commission will deposit the
24 money collected into a separate account with state central services entitled
25 "Public Defender User Fees".

26 (3) The appointing court may at any time review and redetermine
27 whether a person is an indigent person who qualifies for the appointment of an
28 attorney pursuant to this subchapter.

29 (b)(1) The State of Arkansas, or a county, or both, may file a civil
30 action for recovery of money expended in the representation of a person who is
31 determined by a court not to have been indigent at the time expenditures were
32 made.

33 (2) Suit shall be brought within three (3) years after the date
34 of filing of a certificate of indigency.

35 (c) Nothing in this section shall be construed to bar a prosecution for
36 perjury or other offenses based on misrepresentation of financial status."

SECTION 6. Arkansas Code 5-4-303(g) is amended to read as follows:

"(g) In cases where the counsel has been appointed to represent a defendant due to his indigency and if the court suspends the imposition of sentence on a defendant or places him a defendant on probation and if the defendant was determined to be indigent and was appointed counsel, who was paid by the county, then the court, as a condition thereof, may require the defendant to pay, in an amount he can afford to pay, to the county the amount of any indigent attorney's fee expended on his behalf. If the attorney's fees were paid from the county general fund, they shall be returned to the county general fund. If the attorney's fees were expended from the fund pursuant to § 14-20-102, then the money shall be placed back in that fund. at the time of disposition, the court shall revisit the issue of the defendant's indigency. Where appropriate, and where the defendant is financially able to do so, the court may assess an attorney's fee to be paid by the defendant as part of his suspended or probated sentence. The amount of the fee assessed should be commensurate with the defendant's ability to pay. The fee assessed shall be paid to the state as a means of partial reimbursement for providing appointed counsel. In no event shall failure to pay the assessed attorney's fees, standing alone, be grounds for the revocation of the suspended sentence or probated sentence. Any money collected pursuant to this subsection shall be remitted on or before the tenth (10th) day of the month following the month of collection to the State Treasury to the credit of the State Central Services Account there to be put into a separate account entitled 'Public Defender Attorney Fees' to be used solely to defray costs for the Arkansas Public Defender Commission."

SECTION 7. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

1
2 SECTION 9. All laws and parts of laws in conflict with this act are
3 hereby repealed.
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5 SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the
6 Eighty-second General Assembly that there is an immediate necessity for
7 additional funding to provide for the defense of indigent persons by public
8 defenders that this Act so provides; and that this Act should go into effect
9 as soon as possible in order to protect the constitutional rights of indigent
10 defendants. Therefore, an emergency is declared to exist and this act being
11 immediately necessary for the preservation of the public peace, health and
12 safety shall become effective on the date of its approval by the Governor. If
13 the bill is neither approved nor vetoed by the Governor, it shall become
14 effective on the expiration of the period of time during which the Governor
15 may veto the bill. If the bill is vetoed by the Governor and the veto is
16 overridden, it shall become effective on the date the last house overrides the
17 veto.
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19 /s/ Everett
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